

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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**9277QB LLC,**

*Plaintiff,*

-VS-

**EVEREST NATIONAL INSURANCE COMPANY,**

*Defendant.*

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**AMENDED ANSWER**

Civil Action No.: 1:22-cv-06494

Defendant Everest National Insurance Company (“Defendant”), by its attorneys, Barclay Damon LLP, as and for its Amended Answer to Plaintiff’s Verified Complaint, alleges as follows:

**PARTIES**

1. Denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 1 of the Verified Complaint.
2. Admits the allegations contained in Paragraph 2 of the Verified Complaint.

**THE INCIDENT AND UNDERLYING LAWSUIT**

3. Denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 3 of the Verified Complaint.
4. Denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 4 of the Verified Complaint.
5. Denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 5 of the Verified Complaint.
6. Denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 6 of the Verified Complaint.

7. Denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 7 of the Verified Complaint.

8. Denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 8 of the Verified Complaint.

9. Denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 9 of the Verified Complaint.

10. Denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 10 of the Verified Complaint.

11. Admits the existence of the underlying action, *Carlos Gimenez v. 9277QB LLC*, Queens County Supreme Court Index No. 707138/2022 (the “underlying action”), referenced in Paragraph 11 of the Verified Complaint, but denies that Plaintiff has fully and accurately summarized the allegations in the underlying action. Denies knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations contained in Paragraph 11 of the Verified Complaint.

12. Denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 12 of the Verified Complaint.

13. Denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 13 of the Verified Complaint.

**RELEVANT CONTRACT**

14. Denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 14 of the Verified Complaint.

15. Denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 15 of the Verified Complaint.

16. Denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 16 of the Verified Complaint.

17. Denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 17 of the Verified Complaint.

**THE INSURANCE POLICIES, TENDER AND DENIAL**

18. Denies the allegations contained in Paragraph 18 of the Verified Complaint.

19. Denies the allegations contained in Paragraph 19 of the Verified Complaint to the extent that “each Everest policy of insurance” referenced is not specifically identified, and any such policies of insurance speak for themselves. Denies knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations contained in Paragraph 19 of the Verified Complaint.

20. Denies the allegations contained in Paragraph 20 of the Verified Complaint.

21. Denies the allegations contained in Paragraph 21 of the Verified Complaint.

22. Denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 22 of the Verified Complaint.

23. Denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 23 of the Verified Complaint.

24. Denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 24 of the Verified Complaint.

22. Denies the allegations contained in Paragraph 22<sup>1</sup> of the Verified Complaint to the extent that the “denial of coverage” referenced is not specifically identified, and to the extent that

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<sup>1</sup> The Verified Complaint contains Paragraphs numbered 22 through 24, and then a second Paragraph 22 (rather than continuing with Paragraph 25). Defendant’s Answer utilizes correspondingly numbered Paragraphs in order to mirror the Verified Complaint.

any correspondence issued by Defendant speaks for itself. Denies knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations contained in Paragraph 22 of the Verified Complaint.

23. Denies the allegations contained in Paragraph 23 of the Verified Complaint to the extent that the “denial of coverage” referenced is not specifically identified, and to the extent that any correspondence issued by Defendant speaks for itself. Denies knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations contained in Paragraph 23 of the Verified Complaint.

24. Denies the allegations contained in Paragraph 24 of the Verified Complaint.

**AS AND FOR A FIRST CAUSE OF ACTION**

25. Repeats and realleges the respective responses to those Paragraphs incorporated in Paragraph 25 of the Verified Complaint.

26. Denies the allegations contained in Paragraph 26 of the Verified Complaint.

27. Denies the allegations contained in Paragraph 27 of the Verified Complaint.

28. Denies the allegations contained in Paragraph 28 of the Verified Complaint.

29. Denies the allegations contained in Paragraph 29 of the Verified Complaint.

30. Denies the allegations contained in Paragraph 30 of the Verified Complaint.

31. Denies the allegations contained in Paragraph 31 of the Verified Complaint.

32. The allegations contained in Paragraph 32 of the Verified Complaint consist of legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations contained in Paragraph 32 of the Verified Complaint.

**AS AND FOR A SECOND CAUSE OF ACTION**

33. Repeats and realleges the respective responses to those Paragraphs incorporated in Paragraph 33 of the Verified Complaint.

34. Denies the allegations contained in Paragraph 34 of the Verified Complaint.

35. Denies the allegations contained in Paragraph 35 of the Verified Complaint.

36. Denies the allegations contained in Paragraph 36 of the Verified Complaint.

37. Denies the allegations contained in Paragraph 37 of the Verified Complaint.

38. Denies the allegations contained in Paragraph 38 of the Verified Complaint.

39. Denies the allegations contained in Paragraph 39 of the Verified Complaint.

40. Denies the allegations contained in Paragraph 40 of the Verified Complaint.

41. Denies each and every other allegation contained in the Verified Complaint not herein before admitted, denied, or otherwise controverted.

**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

42. Upon information and belief, the Verified Complaint and causes of action set forth therein must be dismissed as the Verified Complaint fails to state any cause of action as against Defendant.

**SECOND AFFIRMATIVE DEFENSE**

43. Upon information and belief, the Verified Complaint and causes of action set forth therein must be dismissed as the Verified Complaint fails to name all necessary parties.

**THIRD AFFIRMATIVE DEFENSE**

44. Upon information and belief, the Verified Complaint and causes of action set forth therein must be dismissed based upon the applicability of other insurance, in accordance with the

conditions set forth in the policies of insurance referenced in the Verified Complaint, including, but not limited to, the Other Insurance Condition (Condition 4) to the Commercial General Liability Coverage Form (CG 00 01 04 13) on Commercial General Liability Policy No. RM1GL00021-201.

#### **FOURTH AFFIRMATIVE DEFENSE**

45. Upon information and belief, the Verified Complaint and causes of action set forth therein must be dismissed based upon the doctrines of waiver, laches, release, equitable estoppel, and/or accord and satisfaction.

#### **FIFTH AFFIRMATIVE DEFENSE**

46. Upon information and belief, the Verified Complaint and causes of action set forth therein must be dismissed to the extent Plaintiff failed to provide notice as soon as practicable of an occurrence and/or incident, in accordance with the conditions set forth in the policies of insurance referenced in the Verified Complaint, including, but not limited to, the Duties in the Event of Occurrence, Offense, Claim or Suit Condition (Condition 2) to the Commercial General Liability Coverage Form (CG 00 01 04 13) on Commercial General Liability Policy No. RM1GL00021-201.

#### **SIXTH AFFIRMATIVE DEFENSE**

47. Upon information and belief, the Verified Complaint and causes of action set forth therein must be dismissed to the extent Plaintiff failed to provide notice as soon as practicable of a claim and/or suit, in accordance with the conditions set forth in the policies of insurance referenced in the Verified Complaint, including, but not limited to, the Duties in the Event of Occurrence, Offense, Claim or Suit Condition (Condition 2) to the Commercial General Liability

Coverage Form (CG 00 01 04 13) on Commercial General Liability Policy No. RM1GL00021-201.

#### **SEVENTH AFFIRMATIVE DEFENSE**

48. Upon information and belief, the Verified Complaint and causes of action set forth therein must be dismissed to the extent Plaintiff failed to satisfy conditions precedent to commencing suit, in accordance with the conditions set forth in the policies of insurance referenced in the Verified Complaint, including, but not limited to, the Legal Action Against Us Condition (Condition 3) to the Commercial General Liability Coverage Form (CG 00 01 04 13), as amended by the New York Changes Endorsement (CG 01 63 04 17), on Commercial General Liability Policy No. RM1GL00021-201.

#### **EIGHTH AFFIRMATIVE DEFENSE**

49. Upon information and belief, the Verified Complaint and causes of action set forth therein must be dismissed to the extent Plaintiff seeks coverage for punitive damages, which are not insurable under the governing law.

#### **NINTH AFFIRMATIVE DEFENSE**

50. Upon information and belief, the Verified Complaint and causes of action set forth therein must be dismissed to the extent Plaintiff voluntarily made any payments, assumed any obligations, and/or incurred any expenses without Defendant's consent, per the conditions set forth in the policies of insurance referenced in the Verified Complaint, including, but not limited to, the Duties in the Event of Occurrence, Offense, Claim or Suit Condition (Condition 2) to the Commercial General Liability Coverage Form (CG 00 01 04 13) on Commercial General Liability Policy No. RM1GL00021-201.

#### **TENTH AFFIRMATIVE DEFENSE**

51. Upon information and belief, the Verified Complaint and causes of action set forth therein must be dismissed to the extent that coverage is subject to the definitions, exclusions, conditions, limits, declarations, and other terms and provisions in the policies of insurance referenced in the Verified Complaint, including, but not limited to, Commercial General Liability Policy No. RM1GL00021-201.

#### **ELEVENTH AFFIRMATIVE DEFENSE**

52. Upon information and belief, the Verified Complaint and causes of action set forth therein must be dismissed to the extent the Commercial General Liability Coverage Form (CG 00 01 04 13) on Commercial General Liability Policy No. RM1GL00021-201 excludes coverage for property damage for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement, per the Contractual Liability Exclusion (Exclusion 2(b)).

#### **TWELFTH AFFIRMATIVE DEFENSE**

53. Upon information and belief, the Verified Complaint and causes of action set forth therein must be dismissed to the extent the Commercial General Liability Coverage Form (CG 00 01 04 13) on Commercial General Liability Policy No. RM1GL00021-201 excludes coverage for property damage arising out of the actual, alleged, or threatened discharge, dispersal, or seepage of pollutants, per the Pollution Exclusion (Exclusion 2(f)).

#### **THIRTEENTH AFFIRMATIVE DEFENSE**

54. Upon information and belief, the Verified Complaint and causes of action set forth therein must be dismissed to the extent the Commercial General Liability Coverage Form (CG 00 01 04 13) on Commercial General Liability Policy No. RM1GL00021-201 excludes coverage for




property damage to personal property in the care, custody, or control of the insured, per the Damage to Property Exclusion (Exclusion 2(j)).

**WHEREFORE**, Defendant demands judgment as follows:

- A. Dismissing the Verified Complaint herein and declaring that Plaintiff is not entitled to additional insured coverage with respect to the underlying action; and
- B. For such other and further relief as this Court may deem just and proper.

**DATED:** April 11, 2023

**BARCLAY DAMON LLP**

By:   
Anthony J. Piazza

*Attorneys for Defendant*  
*Everest National Insurance Company*  
Office and Post Office Address  
2000 Five Star Bank Plaza  
100 Chestnut Street  
Rochester, New York 14604  
Telephone: (585) 295-4420